

**Nutanix and DEPARTMENT OF DEFENSE  
SOFTWARE LICENSE AGREEMENT**

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This document sets forth the Department of the Defense (DoD) Software License Requirements. Licensor's Software License Agreement is attached hereto as Exhibit A and made a material part hereof by this reference. This document, including the Software License Agreement attached as Exhibit A and Publisher Support Agreement Terms contained within Exhibit A constitutes the Agreement between the Nutanix (Licensor) and the DoD. The terms and conditions set out below in these Software License Requirements, supplement, to the extent a conflict exists, supersede, and take precedence over the terms and conditions of Exhibit A. For clarification in this agreement, Publisher and Licensor are synonymous.

With regard to any conflict in license terms between the DOD ESI License Agreement and any GSA negotiated license agreement, the Order of Precedence is in the following order: 1) the DOD ESI License Agreement and 2) any GSA negotiated license agreement.

- 1. Enterprise Language:** The parties agree that more than one agency of the DoD may license products under this Agreement, provided that any use of products by any agency must be made pursuant to one or more executed purchase orders or purchase documents submitted by each applicable agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and to include the Intelligence Community and the US Coast Guard, the terms and conditions of this Agreement terms apply to any purchase of products made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The parties agree the terms of this Agreement supersede and take precedence over the terms included in any purchase order, terms of any shrink-wrap agreement included with the licensed software, terms of any click through agreement included with the licensed software, or any other terms purported to apply to the licensed software, including any Licensor's published policy or program documentation or customer ordering documents. It is also understood by both parties that any Licensor policies, URLs referencing other terms, conditions or policies or educational documents will not be considered part of this license agreement.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulations (DFARS), without regard to principles of conflict of laws.
- 3. Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or where settlement has been agreed to by the DoD agency and the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement. This provision shall not be construed to limit the sovereign immunity of the DoD.

**4. Patent, Copyright, Trademark, and Trade Secret Protection:**

- a) The Licensor shall, at its expense, indemnify and hold the DoD harmless from any suit or proceeding which may be brought by a third party against the DoD, its departments, officers or employees for the alleged infringement of any United States patents, copyrights, or trademarks, or for a misappropriation of a United States trade secret arising out of performance of this Agreement (the "Claim"), including all licensed products provided by the Licensor. For the purposes of this Agreement, "indemnify and hold harmless" shall mean the Licensor's specific, exclusive, and limited obligation to (a) pay any judgments, fines, and penalties finally awarded by a court or competent jurisdiction, governmental/administrative body or any settlements reached pursuant to Claim and (b) reimburse the DoD for its reasonable administrative costs or expenses, including without limitation reasonable attorney's fees, it necessarily incurs in handling the Claim. The DoD agrees to give Licensor prompt notice of any such claim of which it learns. The DoD has the sole authority to represent itself in actions brought against the DoD. Licensor shall not, without the DoD's consent, which shall not be unreasonably withheld, conditioned, or delayed, enter into any settlement agreement which (a) states or implies that the DoD has engaged in any wrongful or improper activity other than the innocent use of the material which is the subject of the Claim, (b) requires the DoD to perform or cease to perform any act or relinquish any right, other than to cease use of the material which is the subject of the Claim, or (c) requires the DoD to make a payment which Licensor is not obligated by this Agreement to pay on behalf of the DoD. It is expressly agreed by the Licensor that, in the event it makes an appropriate request that the DoD to provide support to the Licensor in defending any such Claim, the Licensor shall reimburse the DoD for all necessary expenses (including attorneys' fees, if such are made necessary by the Licensor's request) incurred by the DoD for such support.
- b) The Licensor agrees to exercise reasonable due diligence to prevent claims of infringement on the rights of third parties. The Licensor certifies that, in all respects applicable to this Agreement, it has exercised and will continue to exercise due diligence to ensure that all licensed products provided under this Agreement do not infringe on the patents, copyrights, trademarks, trade secrets or other proprietary interests of any kind which may be held by third parties.
- c) If, in the Licensor's opinion, the licensed products furnished hereunder are likely to or do become subject to a claim of infringement of a United States patent, copyright, or trademark, or for a misappropriation of trade secret, then without diminishing the Licensor's obligation to satisfy any final award, the Licensor may, at its option and expense, substitute functional equivalents for the alleged infringing licensed products, or, at the Licensor's option and expense, obtain the rights for the DoD to continue the use of such licensed products.
- d) If any of the licensed products provided by the Licensor are in such suit or proceeding held to constitute infringement and the use thereof is enjoined, the Licensor shall, at its own expense and at its option, either procure the right to continue use of such infringing products, replace them with non-infringing items, or modify them so that they are no longer infringing.
- e) If use of the licensed products is enjoined and the Licensor is unable to do any of the preceding set forth in item (e) above, the Licensor agrees to, upon return of the licensed products, refund to the DoD the license fee paid for the infringing licensed products,

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- pro-rated over a sixty (60) month period from the date of delivery plus any unused prepaid maintenance fees.
- f) The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement.
  - g) Notwithstanding the above, the Licensor shall have no obligation under this Section 4 for:
    - (1) Modification of any licensed products provided by the DoD or a third party acting under the direction of the DoD;
    - (2) any material provided by the DoD to the Licensor and incorporated into, or used to prepare the product;
    - (3) use of the Software after Licensor recommends discontinuation because of possible or actual infringement and has provided one of the remedy's under (e) or (f) above;
    - (4) use of the licensed products in other than its specified operating environment;
    - (5) the combination, operation, or use of the licensed products with other products, services, or deliverables not provided by the Licensor as a system or the combination, operation, or use of the product, service, or deliverable, with any products, data, or apparatus that the Licensor did not provide;
    - (6) infringement of a non-Licensor product alone;
    - (7) the DoD's use of the licensed product beyond the scope contemplated by the Agreement; or
    - (8) the DoD's failure to use corrections or enhancements made available to the DoD by the Licensor at no charge.
  - h) The obligation to indemnify the DoD, under the terms of this Section, shall be the Licensor's sole and exclusive obligation for the infringement or misappropriation of intellectual property.

### 5. **Virus, Malicious, Mischievous or Destructive Programming:**

Licensor warrants that the licensed product as delivered by Licensor does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code to allow unauthorized intrusion upon, disabling of, or erasure of the licensed products (each a "Virus"). However, the licensed products may contain a key limiting use to the scope and quantity of the license(s) granted, and license keys issued by Licensor for temporary use are time-sensitive.

The DoD's exclusive remedy, and Licensor's sole obligation, for any breach of the foregoing warranty shall be for Licensor to (a) replace the licensed products with a copy that does not contain Virus, and (b) if the DoD, has suffered an interruption in the availability of its computer system caused by Virus contained in the licensed product, reimburse the DoD for the actual reasonable cost to remove the Virus and restore the DoD's most recent back up copy of data provided that:

- the licensed products have been installed and used by the DoD in accordance with the Documentation;
- the licensed products have not been modified by any party other than Licensor;
- The DoD has installed and tested, in a test environment which is a mirror image of the production environment, all new releases of the licensed products and has used a

generally accepted antivirus software to screen the licensed products prior to installation in its production environment.

Under no circumstances shall Licensor be liable for damages to the DoD for loss of the DoD's data arising from the failure of the licensed products to conform to the warranty stated above.

- 6. Delivery:** Publisher's delivery of the Products to DoD shall be by electronic download.
- 7. Program Warranty:** remedying the Software. We have full title to and ownership of all Software or possess the right to grant the licenses granted under this Agreement. The Software shall be free, at the time of receipt of any programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), the purpose of which is to intentionally cause the Software to cease operating, or to damage, interrupt, interfere with or hinder the operation of the Software, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating or otherwise permit the unauthorized access to Your systems or data. The initially-shipped version of the Software shall materially conform to the Documentation for a period of 365 days from the date of Delivery ("Software Warranty Period"). The Software is not warranted to be totally error-free. In the event of a material non-conformity in the Software that is reported to Us during the Software Warranty Period, and which is reproducible and verifiable, We shall either promptly repair or replace the Software or refund the amounts received for the non-conforming Software. This warranty excludes defects resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner that is materially inconsistent with the Documentation.
- 9.2 Cloud Services.** We warrant that the Cloud Services shall materially comply with the Documentation under normal use and circumstances. The Cloud Services are not warranted to be totally error free. In the event of a material and verifiable breach of this warranty We will refund to you that portion of any fees that You have pre-paid for services that were not rendered in accordance with this warranty.
- 9.3 Support Services.** We warrant that the Support Services shall be provided in a professional manner with reasonable care and skill. Your sole remedy for breach of this warranty shall be reperformance of the Support Services at no additional cost provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Support Services.
- 9.4 Professional Services.** The Professional Services shall be provided in a professional manner with reasonable care and skill. Your sole remedy for breach of this warranty shall be reperformance of the Professional Services at no additional cost, provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Professional Services. A breach of one SOW shall not amount to a breach under any other SOW.
- 9.5 LIMITATIONS AND EXCLUSIONS.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE YOUR SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED ABOVE, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS-IS" AND ALL OTHER WARRANTIES INCLUDING BUT NOT

LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.

**9.6 Hardware Compatibility.** Software shall only be compatible with hardware specified on the Nutanix Hardware Compatibility List available at <https://www.nutanix.com/products/hardware-platforms/> as may be amended from time to time.

- 8. Limitation of Liability:** The Licensor's liability to the DoD under this Agreement shall be limited to the greater of (a) the value of any purchase order issued; or (b) \$250,000. This limitation does not apply to damages for:

- a) Bodily injury;
- b) death;
- c) intentional injury;
- d) damage to real property or tangible personal property for which the Licensor is legally liable; or
- e) licensor's indemnity of the DoD for patent, copyright, trade secret, or trademark protection.

In no event will the Licensor be liable for consequential, indirect, or incidental damages unless otherwise specified in the Agreement. Licensor will not be liable for damages due to lost records or data.

- a) **Termination:** Licensor may not terminate this Agreement for non-payment from reseller. The DoD may terminate this Agreement without cause by giving Licensor thirty (30) calendar day's prior written notice (Notice of Termination) whenever the DoD shall determine that such termination is in the best interest of the DoD (Termination for Convenience).

- 9. Background Checks:** This term will be applicable if required by local command policy and prior to the commencement of on-site professional services by Licensee employee who is proposed for assignment to perform services at your site or via remote access in or from the United States and only if the Licensor employee does NOT possess a Department of Defense ("DoD") performed National Agency Check with Inquiries ("NACI") or a DoD security clearance of SECRET or higher, Licensor, or its agent, will complete a criminal background check, or confirm that such a background check has been completed, on such employee. Subject to mutual agreement of the parties at the appropriate time, the criminal background check shall consist of a check of public records, to the extent available at the county level, where the employee has established credit in the United States as determined by a social security trace. The check is for felony and misdemeanor convictions within the seven (7) years preceding the date of the check. To the extent not prohibited by law, Licensor shall not assign any employee to perform such services for whom a criminal background check, at the time of its completion, uncovered conviction of a felony or conviction of a misdemeanor. In the event that DoD requires on-site support outside

the United States, Licensors will make reasonable efforts to work with DoD in order to address its security concerns.

10. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information.
11. **Publicity/Advertisement:** The Licensors must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
12. **Territory:** Any Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
13. **Backup for User Documentation:** Licensors grants DoD the right to make a reasonable number of copies of licensed software for DoD's internal business purposes. DoD is responsible for ensuring that all copyright notices, trademarks and other restrictive legends are maintained on such copies. DoD is also responsible for reporting to Licensors if DoD learns of the misuse or mishandling of User Documentation provided under the contract to DoD personnel, contractors or Government employees.
14. **Transfers and Assignments:** Licensee is authorized to transfer or assign the Software or Licensee's rights in the Software, and such authorization would include sublicensing, assignment or transfer among or between DOD agencies, outsourcers, contractors or Licensee, (in support of the DoD mission) or authorize any portion of the Software to be copied onto or accessed from another individual's or entity's computer, except as may be explicitly provided in this Agreement,
  - a) **Transfers:** within the DoD and in the event that an Authorized User has a valid license under this Agreement and that Authorized User is reorganized or restructured such that its responsibilities and operations are transferred to another Authorized User agency, the agency shall have the right to assign the affected program licenses to a successor.
  - b) **Assignments:** Licensee is authorized to assign ownership of licenses when Licensee intends to designate an outsourcer, contractor (in support of the DoD mission), DoD Agency or other, as determined, to assume ownership of the license along Licensors written concurrence. All activities by such Assignee shall be subject to the Licensors's Software License Agreement as modified herein. Any deviation shall be subject to a separate agreement between Licensors and such Assignee, specifying conditions for the management and maintenance of the Software, which agreement shall not impose any more restrictive covenants than are provided to Licensee in the Licensors's Software License Agreement, as modified herein. The assignment of licenses will be without cost to any party involved in the assignment of licenses. It is further understood that Assignee will be responsible for all future software maintenance costs of any assigned licenses.
  - c) Licensee shall complete any required Licensors documentation required to facilitate the transfer or assignment of license and continuation of support for the transferee or assignee. All license transfers or assignments will be without cost to the Licensee,

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provided that the licenses are current with regard to Licensor annual maintenance, and the Licensee does not re-market or otherwise intend to resell the licenses to be transferred.

It is inherently understood Licensee and the successor transferee or assignee agree to be bound to this Software License Agreement.

- 15. Functionality Replacement and Extended Support.** If Licensor removes any or all of the material features or functionality to which DoD is being granted access hereunder from the Software without introducing replacement or substitute functionality such that the Software no longer performs its core operations as when initially released and Licensor subsequently offers those features or functionality in a new or different product (whether directly or indirectly or through a third party), then upon request by DoD the License will be deemed to include (i) the portion of those new or different products that contain the original features, or (ii) if those features cannot be separated out, the entire product subject to payment of fees applicable to any additional features or functionality, or (iii) another reasonable substitute at no additional charge to DoD. If the Software provided to DoD is updated as replacement, renamed or re-branded applications or products for any reason, then DoD shall be entitled to the same license to use the replacement, renamed or re-branded product as DoD had with respect to the Software that DoD had immediately prior to such replacement, renaming or re-branding, at no additional charge (for the previously licensed features or functionality) to DoD so long as (a) the new applications or products are functionally equivalent, at a minimum, and the same conditions of use apply as to the Software and (b) Licensor ceased or has advised DoD that Licensor intends to cease supporting the initial Software while DoD was still purchasing Maintenance and Support for such Software. However, throughout the term of this agreement, the Licensor will provide support services pursuant to Nutanix Support Policies.
- 16. Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its Successor, rights and assigns. Any software name changes, re-packing or merger of similar products that carry forward the same or similar function of the software shall be supported with updates, upgrades and new releases under as per the terms of this agreement..
- 17. Audit Responsibilities:** This Section sets out the sole audit right under this agreement.
- a) DOD will maintain, and promptly provide to Publisher upon its request, but no more frequently than once in a twelve (12) month period, accurate records regarding use of the software by or for DOD. If DOD becomes aware of any unlicensed use of the software, DOD will notify Contractor and Publisher within 15 calendar days, providing reasonable details. The limit of DOD's responsibility for any unlicensed use of the software by any Users employed by or performing services for DOD is the requirement that DOD purchase additional licenses for the product through Contractor without any penalty or promptly stop using the software and delete any unauthorized copies and Publisher may seek compensation under applicable FAR and statutory provisions
  - b) DOD will perform a self-audit, upon the request of the Publisher, but no more frequently than once in a twelve (12) month period, and report any change in software program use (hereinafter "True up number"). The Publisher may make such a request of an individual agency of the DOD and will notify the DOD in the event of such a request. If the Publisher requests a self-audit from a DOD agency, a will not make another request

of that agency for at least 12 months. Any self-audit, which shall be certified by a DOD employee authorized to do so, shall include, but not be limited to, the number of copies of the programs installed and/or in use by the DOD, the designated system(s) on which the programs are installed and/or running, and if applicable, the number of users of the programs. DOD shall notify Contractor and Publisher of the True up number no later than 90 calendar days after completion of the self-audit. If the self-audit finds that DOD is under-licensed, DOD will either 1) cease use of the quantity in excess of the DoD licensed quantity and work with the Publisher and Contractor in good faith to account for such excess use or 2) make an additional purchase of the product through Contractor, wherein such pricing is in accordance with any current ESI pricing. The procurement of additional licenses, if required, will transpire no later than 60 days after DOD's aforementioned notification. There will be no penalties involved in the procurement of the additional licenses.

- 18. US Government Configuration Baseline:** The Publisher shall comply with the requirements of the US Government Configuration Baseline (USGCB) as specified at <http://usgcb.nist.gov> to ensure applications are fully functional and operate correctly as intended. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved USGCB configuration.
- a) Applications designed for normal end users shall run in the standard user context without elevated system administration privileges.
  - b) Publisher shall also certify that any subsequent product/module for the life of the agreement is/are fully functional and operate correctly as intended on systems using USGCB prior to any product/module revisions being made available for Government use. Further, the Publisher shall maintain operability with USGCB standards as they evolve.
  - c) DoD buyers may require compliance with additional baseline configuration requirements.
- 19. Net-Centricity:** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at: [http://DoDcio.defense.gov/Portals/0/Documents/NetCentric\\_Checklist\\_v2-1-3\\_.pdf](http://DoDcio.defense.gov/Portals/0/Documents/NetCentric_Checklist_v2-1-3_.pdf) to provide information on the Net-Centric posture of their IT products and services. Software products offered to and purchased by the DoD and Intelligence Community shall be licensed by the software publisher without restriction to information sharing among the DoD and IC in performing their missions.
- 20. Section 508 of the Rehabilitation Act Compliance:** All products and services provided under this agreement must meet the applicable accessibility standards at 36 CFR Part 1194 as required by FAR Case 1999-607. General information regarding the Section 508 Act can be found at the web site [www.section508.gov](http://www.section508.gov). The Publisher's Section 508 compliancy information must be readily available at the Publisher's website.



- 21. Orders:** Any term or condition in an order to be placed that will expressly supersede a term or condition of this agreement must be approved in writing by the designated DOD PCO for this ESI BPA, a copy of which shall be attached to such order. Any term or condition in an order that has been placed that expressly supersedes a term or condition of this agreement is ineffective unless subsequently agreed to in writing by the designated DOD PCO for this agreement attached to the order with an Administrative Modification.
- 22. Temporary Use of Software During Times of Conflict and/or Natural Disaster:** As part of Temporary Expeditionary Deployments (TEDs), during the term of this Agreement, DoD may temporarily deploy and install or use on, or access from qualified desktops or servers, a reasonable number of Licensor software products in addition to those previously licensed pursuant to this Agreement at no additional cost ("TED Licenses"). TEDs are limited to deployments away from in-garrison locations (any military post or government office where troops or civilian government personnel are at a permanent location), war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 19 April 1995 (i.e., the Timothy McVeigh Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); the initiated international terrorist attacks, perpetrated on American soil, on 9/11/2001; and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TED's) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces. For licenses connected to a DoD network server, on a semi-annual basis, Licensor shall provide an additional temporary license pool equal to the quantity of network versions purchased, which may be accessed during a TED event. For computers not connected to a DoD network server, The Licensor shall provide, on a quarterly basis, a pre-activated temporary (ninety) 90 day single seat network license which can be copied for use on any number of computers. After the TED, or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by the Licensor, the DoD will provide a written certification that the TED Licenses have either been removed from service, or payment has been made under this Agreement to purchase additional perpetual licenses equal to the number of TED Licenses not removed from service. DoD agrees to use the TED Licenses in accordance with the terms contained in this Agreement and the applicable version of the Software License Agreement.
- 23. Software Asset Management & ISO-IEC 19770:2015 Series:** The Licensor shall comply with ISO 19770:2015 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO-IEC 19770:2015 standard is not approved by the ISO International Standards Committee at the time of contract execution, the Licensor shall make commercially reasonable efforts to comply with the standard upon approval by ISO. -
- 24. Authorized Users:** An Authorized User includes, but is not limited to DoD government employees (military, civilian, reserves, national guard), contractors, non-human devices, detailed individuals that are included and accounted for in the DoD in support of DoD missions and those individuals or non-human devices who have access to, use or are tracked by Licensor's programs.

- 25. Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. This license provides the DoD all rights concerning data sharing, data access, data transfer and data manipulation for authorized users associated with the DoD missions. The parties agree that as long as one party has a valid license, the transfer of data or the sharing of data is unrestricted. This license also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.
- 26. Data Recovery and Virtualization:**
- a) Data Recovery methods include four types of environments: Backup, Failover, Standby, and Remote Mirroring. All types of data recovery servers will not require additional licenses as long as the number of data recovery servers equals the number of primary servers.
  - b) For virtualized servers, both parties agree that only the primary server must be licensed. It is understood that advanced virtualization functions (soft partitioning including live migration) are incorporated herein by expressed written reference and by this license agreement. Thus, no additional licenses will be required to accommodate future data recovery and virtualization commercially accepted methods or practices.
- 27. Shelf Ware:** It is recognized, that in some instances, DoD may have excess Licensor software licenses that are not currently being used or needed by DoD. These licenses are commonly called Shelf Ware. At DoD's sole discretion, the DoD may transfer any of these licenses as described in Section 13 of this document or DoD may terminate the license grant, as it deems necessary. The termination or transfer of licenses may result in a reduced license count and will be deducted from the annual maintenance payment,. No such reduction shall occur in the initial contract\license term. When a subset of licenses is terminated or if the level of support is reduced, support for those remaining licenses will not change in terms of level of support services or alteration or previously negotiated discount.
- 28. Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.
- 29. Additional Functionality:** Any additional or new functionality provided on Licensor Products may impose additional license terms and/or fees on the Government. However, the government may not be charged for any feature or functionality that the Government has previously licensed.
- 30. License copies for training, evaluation, research and development (including Research Labs) and back-up.**
- During the term of this agreement (including any renewal term), an agency (as defined locally) may (i) run up to 50 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that the Licensor make available to license as an additional product for a 120-day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 5% (five percent) of Authorized Users desktops or processors for research and development purposes; and (iv)

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make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

- 31. Finality of Terms:** This agreement and any attachments to this agreement will be the sole document governing the granting of licenses between DoD and Licensor. There shall be no changes to this license agreement unless agreed to by both parties in writing.
- 32. Software Titles Incorporated by this License Agreement:** All software titles sold by Licensor will be incorporated into this agreement and any and all other software or software title which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Licensor may purchase in the future.
- 33. Use of this Agreement by the Federal Government:** The parties agree that, if a federal agency implements another contracting vehicle for Licensor's products, and if the licensee is an agency of the Federal Government, then, the terms and conditions of this Agreement can apply to any purchase of software products by that agency, and that the terms and conditions of this Agreement become part of the purchase document without need for further execution. Additionally, should a Federal Government Agency desire to use this agreement, it will be without remuneration to any party.
- 34. DoD Enterprise License:** The parties agree, that in the spirit of cooperation, there may be an instance, during the course of this agreement, where DoD desires an Enterprise Agreement with the publisher. The parties agree that all will work towards implementation of a DoD Enterprise Agreements, that all terms contained in this agreement may become part of the Enterprise Agreement and the DoD and Publisher will work cooperatively on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise and so on).
- 35. Virtualization:** Publisher recognizes Virtualization through partitioning. Should DOD desire to implement virtualization for Publisher's software programs licensed pursuant to this agreement, partitioning shall be defined and executed as follows:
  - a) Soft Partition (also called Software Partition): Soft Partition means to partition the operating system using system resource managers that limit the number of CPUs running Publisher Programs. Soft Partitioning creates areas within the same operating system where CPU resources are specifically allocated to respective applications.
  - b) Hard Partition (also called Hardware Partition): Hard Partition means to partition the server by physically separating the processors of a single server into distinct smaller servers, each of which acts as a physically independent, self-contained server, typically with its own dedicated CPUs, operating system, separate boot area, memory, input/output subsystem, and network resources.
  - c) Implementation: If DOD partitions through either Soft Partitioning or Hard Partitioning then DOD is only required to license programs for the partitions on which DOD will be installing and/or running the software. .

**36. Deployment and Use of Perpetual, Subscription or Term Licenses in a Cloud Computing Environment:**

DOD can deploy and use any quantity of its perpetual or term Publisher licenses in any cloud computing environment (private or public) and with any third-party cloud service provider. The use of DOD licenses is limited to the mission and business of the DOD. The DOD retains all responsibilities of the licenses. The DOD will maintain records of license deployment.

DOD can transfer its perpetual and term Publisher licenses between on-premises data centers and third party cloud service providers or to other third party cloud service providers without charge or alteration of license terms, limitation, or change in functionality.

**37. Ineffective Provisions:** If any document incorporated by reference into this agreement, and/or referenced therein, contains a provision (a) allowing for the automatic termination of your license rights or technical support services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law, and/or that otherwise violates applicable Federal law, then, such terms shall not apply and shall have no effect. If any document incorporated by reference into this agreement, including additional terms and conditions included and/or referenced therein, contains an indemnification provision, such provision shall not apply as to the United States indemnifying the Publisher or any other party.

**38. Previously Acquired Licenses:** All Publisher licenses, of any versions or releases, that were acquired and/or assigned to any DOD agency prior to the effective date of this Software License Agreement shall be converted and replaced with terms and conditions of this Software License Agreement.

**39. Data Ownership in a Cloud Environment:** When the term of services end, Licensee generally no longer has rights to access or use the services, including the associated Publisher programs and services environments. For a period of 180 days after the end of the services, Publisher shall not limit Licensee's access to content and applications then in the services environment for the purpose of retrieval by Licensee. At the end of the 180-day period, and except as may be required by law, regulation, or federal, DoD, or agency policy or directives, Publisher may delete or otherwise render inaccessible any of content and applications that remain in the services environment.

**40. Professional Services:** Publisher may subcontract all or part of any material or substantive Services to be performed, to a qualified third party only with the explicit written acceptance of the Licensor. Any subcontracting of services must be noted on the Order Form and acknowledged in the customer's delivery order.

**41. Parallel Operations:** For no additional cost, the DOD agency shall have the ability to run Publisher's software on parallel systems for up to 180 days, or a longer mutually agreed upon timeframe, for system migrations, testing, and/or hardware refreshes. The DOD will ensure the duplicate Instances required during the Parallel Operation period are uninstalled and deleted once the parallel operation is no longer required. The DOD will only request the

## DoD Software License Agreement

ability to run the same number of license instances that are currently owned by the DOD. If additional licenses are required than the quantity owned by the DOD agency, the DOD will acquire the necessary licenses.

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## EXHIBIT A- NUTANIX LICENSE AND SERVICE AGREEMENT

Thank you for choosing to work with Nutanix. We look forward to a long and mutually beneficial relationship with your organization. This Agreement is entered into between Nutanix Inc., or if contracting in Europe, Africa or the middle east, Nutanix Netherlands B.V. (“Us”, “We” or “Our”) and your organization (“You or “Your”) and is effective as of the date signed or accepted by You. This Agreement will allow You to license on-premise software, procure internet-based software-as-a-service, as well as support and other professional services any time at Your convenience. It applies if Your contract: (a) indirectly through an authorised Nutanix partner; or (b) directly with Us, regardless of whether We or a Nutanix partner charges You for the products and services or not.

### 1. DEFINITIONS

The following capitalized terms have the following meaning(s):

- 1.1 “Affiliates” means any corporation or other business entity which controls, is controlled by or is under common control by You through the ownership of more than fifty percent (50%) of the outstanding voting stock of the controlled corporation or more than fifty percent (50%) of the equity interests of a non-corporate entity. If You are a public sector entity, an Affiliate is an organization over which You are required to exercise administrative control by applicable laws or regulations.
- 1.2 “Cloud Services” means Our branded offerings made available to You via the internet from equipment owned or operated by or for Us.
- 1.3 “Documentation” means Our operating manuals, user instructions, technical literature and functional materials describing the features and functions of the Software and Cloud Services made available to You by Us.
- 1.4 “Entitlement” means Our record of the SKUs, types, quantities and other use metrics of Your purchases from Us. An Entitlement for: (a) Software, Support Services and Professional Services is provided by Us to You in an order acknowledgement or similar document and (b) Cloud Services is made available in the Nutanix Billing Center.
- 1.5 “Nutanix Billing Center” means the online console made available by Us detailing Cloud Services purchased by You
- 1.6 “Nutanix Partner” means a distributor, reseller or other channel sales participating entity that has been approved by Us and is authorized to provide products or services to You.
- 1.7 “Professional Services” means consulting, implementation and training related to the Software and Cloud Services.
- 1.8 “Software” means: (a) Our Nutanix-branded software specified in the Entitlement; (b) Updates and Upgrades; and (c) tools and utilities related to Cloud Services.
- 1.9 “SOW” means a statement of work issued by Us that describes the Professional Services.
- 1.10 “Support Services” means Our branded offerings described at <https://www.nutanix.com/support-services/product-support/product-support-programs/>, as may be updated from time to time.
- 1.11 “Updates” and “Upgrades” means minor and major releases of the Software provided as part of the Support Services.

### 2. CONTRACT APPROVAL

By clicking the “ACCEPT” button when downloading or installing the Software or by copying, accessing or using the Software, Documentation, Cloud Services, or Support Services and Professional Services, as applicable; or by issuing a purchase order that references this Agreement, You agree that this Agreement governs Your use of the Software and Documentation, receipt of the Cloud Services, Support Services and Professional Services.

### 3. ENTITLEMENT

We shall generate an Entitlement for: (a) Software, Support Services and Professional Services on booking the applicable purchase order placed by a Nutanix Partner or You with Us, as applicable; and (b) Cloud Services on booking a purchase order as specified in 3(a) or receipt of an online order via the Nutanix Billing Center.

### 4. SOFTWARE LICENSE AND USE

- 4.1 License Grant. You are granted a personal, non-exclusive, non-transferable, worldwide, limited and revocable license to install and use the Software specified in the Entitlement for Your internal business purposes only unless otherwise specified in the Entitlement. You may use the Documentation in support of Your use of the Software. The Software licenses are either (i) node-locked to specific hardware and granted for the life of that hardware, or (ii) independent of hardware and granted for a specific term.
- 4.2 Delivery. Delivery of Software occurs when We make an enabling key available to You or when We otherwise make the Software available to You for download and use.
- 4.3 Acceptable Use. Without Our prior written consent, You agree not to: (a) use the Software or Documentation in breach of the Entitlement or this Agreement; (b) transfer, resell or otherwise use Software or Documentation in a service bureau, commercial hosting service or any similar capacity (unless explicitly permitted in the Entitlement); (c) publish the results of any Software benchmark tests or competitive analysis; (d) attempt to gain access to the source code or other proprietary portions of the Software; (e) transfer or use any node-locked Software to hardware other than that on which it was originally installed or use it with grey-market hardware; (f) modify, adapt or create a derivative work of the Software or Documentation; or (g) remove, conceal or alter any product identification, copyright or other proprietary notices in the Software or Documentation.

### 5. CLOUD SERVICES

- 5.1 Access. If You procure Cloud Services, You receive a non-exclusive, non-transferable right to access and use the Cloud Services specified in the Entitlement. To the extent that the Cloud Services require You to download and install any Software, use of that Software shall be subject to the terms of this Agreement. Geographic limitations may apply to the Cloud Services, as specified in the Documentation.
- 5.2 Credentials. Once We provide You with the means of creating credentials to access and use the Cloud Services, it is Your sole responsibility to provision and control the credentials of Your employees, agents, contractors and other users of the Cloud Services (“User(s)”). You agree to implement best practices with respect to such controls and notify Us immediately of any suspected or actual misuse or compromise of User credentials.
- 5.3 Content. The Cloud Services provide the ability to use, access, load, store, manage or monitor: (a) data belonging to You or third parties; and (b) third-party software, applications and computing environments services, content, data and websites provided in connection with the Cloud Services, including via the Nutanix Marketplace at <https://portal.nutanix.com> (collectively, “Your Content”). Use of Your Content is governed exclusively by separate agreements between You and those third parties providing Your Content. It is Your responsibility to secure and maintain all rights in Your Content necessary for Us to legally provide the Cloud Services.
- 5.4 Acceptable Use. Without Our prior written consent, You shall not, and shall not enable anyone else to use the Cloud Services: (a) in breach of the Entitlement or this Agreement; or (b) as an application services provider, service bureau, commercial hosting service or similar capacity. You shall not use the Cloud Services to: (a) transmit or store any content that may pose threats or otherwise engage in any conduct that may disrupt the operation of the Cloud Services or interfere with any third-party; (b) manage specifically regulated data, including, but not limited to data subject to the Health Insurance Portability and Accountability Act, Basel II, Graham Leach Bliley and Payment Card Industry regulations; (c) perform performance tests, benchmarking or any competitive analysis; (d) conduct any abusive, harassing, slanderous, fraudulent, illegal, obscene, defamatory, immoral, objectionable or harmful activity; or (e) violate any laws or third-party rights, including any intellectual property rights, personal data and privacy rights; or (f) conduct, directly or indirectly, any activities associated with cryptocurrency mining or similar endeavors. You shall not: (a) attempt to gain access to any Cloud Services You are not authorized to use, including any administrative portions of the Cloud Services; (b) circumvent any security features; or (c) use the Cloud Services in any way that poses security threats or otherwise introduces security or performance vulnerabilities into the Cloud Services.

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5.5 Suspension. We may suspend or terminate access to Cloud Services if: (a) You are in violation of this Agreement; (b) Your use poses a security threat or actual or potential violation of any law or this Agreement; (c) it is required by a court order, subpoena or other legal action, or; (d) We believe suspension is required to prevent harm to, or preserve availability of, the Cloud Services or Your Content. No fees will be refundable to You for suspension under this Section 5.5.

**6. THIRD-PARTY AND OPEN SOURCE SOFTWARE.** The Software and Cloud Services may contain copyrighted third-party software as well as open source software. The third-party licensors retain all intellectual property rights in the third-party software. You can use third-party software and open source software in support of Your use of the Software in accordance with the terms of this Agreement. Your right to use open source software shall be subject to the respective terms of the open source licenses, which are provided at <https://www.nutanix.com/opensource>. You may have the right to receive source code for certain open source software included or used in the Cloud Services for a period of three (3) years following Your use of those Cloud Services. You may exercise this right by following the directions provided at <https://www.nutanix.com/opensource> or by writing to Us as specified in Section 18.4 (Notices).

## **7. SUPPORT SERVICES.**

7.1 Term. Subject to Your payment of the applicable fees, We shall provide the Support Services specified in the Entitlement and in accordance with the Support Terms available at <https://www.nutanix.com/support-terms/>.

## **8. PROFESSIONAL SERVICES**

8.1 Scope. We shall deliver the Professional Services specified in the Entitlement and any SOW. We do not do any custom development work.

8.2 Your Obligations. You shall provide Us with any equipment, software, information, timely decisions, direction and facilities necessary for Us to perform the Professional Services as specified in the SOW.

8.3 License. You grant Us a non-exclusive, worldwide, royalty-free license to use Your intellectual property for the purpose of performing the Professional Services. You have a license to use any deliverables provided as part of the Professional Services on the terms specified in Section 4 above.

## **9. WARRANTIES**

9.1 Software. The initially-shipped version of the Software shall materially conform to the Documentation for a period of ninety (90) days from the date of delivery ("Software Warranty Period"). The Software is not warranted to be totally error-free. In the event of a material non-conformity in the Software that is reported to Us during the Software Warranty Period, and which is reproducible and verifiable, We shall either promptly repair or replace the Software or refund the amounts received for the non-conforming Software, at Our reasonable discretion. This warranty excludes defects resulting from accidents, abuse, unauthorized repair, modifications, misapplication, or use of the Software in a manner that is materially inconsistent with the Documentation. We agree to screen the Software using commercially available anti-virus software prior to delivery and We warrant, to the best of Our knowledge, at delivery the Software contains no known virus, malware, spyware, trojan horse or other disabling code.

9.2 Cloud Services. We warrant that the Cloud Services shall materially comply with the Documentation under normal use and circumstances. The Cloud Services are not warranted to be totally error free. In the event of a material and verifiable breach of this warranty We will refund to you that portion of any fees that You have pre-paid for services that were not rendered in accordance with this warranty.

9.3 Support Services. We warrant that the Support Services shall be provided in a professional manner with reasonable care and skill. Your sole remedy for breach of this warranty shall be reperformance of the Support Services at no additional cost provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Support Services.

9.4 Professional Services. The Professional Services shall be provided in a professional manner with reasonable care and skill. Your sole remedy for breach of this warranty shall be reperformance of the Professional Services at no additional cost, provided that You notify Us of any non-conformity within thirty (30) days of the provision of the non-conforming Professional Services. A breach of one SOW shall not amount to a breach under any other SOW.

9.5 LIMITATIONS AND EXCLUSIONS. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE YOUR SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. EXCEPT FOR THE WARRANTIES SPECIFICALLY DESCRIBED ABOVE, ALL PRODUCTS AND SERVICES ARE PROVIDED "AS-IS" AND ALL OTHER WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE EXPRESSLY DISCLAIMED.

9.6 Hardware Compatibility. Software shall only be compatible with hardware specified on the Nutanix Hardware Compatibility List available at <https://www.nutanix.com/products/hardware-platforms/> as may be amended from time to time.

## **11. EARLY ACCESS, EVALUATION, TRIAL AND OTHER NO-CHARGE SERVICES.**

11.1 Evaluation Software and Early Access Software. If You are acquiring generally available products for the purposes of evaluation ("Evaluation Software"), or Software specifically identified as alpha, beta, pre-release, demonstration or preview ("Early Access Software"), Evaluation Software and Early Access Software may be used for a period not exceeding 90 days from delivery or access being granted ("Evaluation Period") and up to the maximum amounts of usage as specified in the Entitlement and Documentation or as otherwise agreed by Us in writing. Evaluation Software (and any hardware provided pursuant to the evaluation) may only be used in non-production environments and not for commercial purposes or the processing of any production data. You agree to uninstall, delete and cease using the Evaluation Software at the end of the Evaluation Period. You agree to cooperate with Us in testing and providing feedback in relation to the Early Access Software. Any feedback provided shall be deemed proprietary and confidential to Us and may be used by Us without restriction. Any hardware that is provided to you during the Evaluation Period is provided to You on loan. No title to any hardware shall pass to you under this Agreement. All hardware must be returned to Us at the end of the evaluation period and we will pay any shipping costs. You bear all the risk of loss associated with any hardware provided for evaluation purposes from the time You receive it until the time We receive it back from You.

11.2 No-Charge Services. We may offer certain Cloud Services, or certain features or functions of Cloud Services, to You at no charge, including some which are not generally available and are identified as alpha, beta, pre-release, demonstration or preview ("Early Access Services"), as well as free or trial accounts to generally available Cloud Services for a designated period of time, quantity, or other use metrics ("Trial Services") and, together with Early Access Services, "No-Charge Services"). This Agreement applies to No-Charge Services. We can modify or discontinue No-Charge Services at any time. We are entitled to invoice You for fees calculated in accordance with Our then current price list if You use the No-Charge Services beyond the permitted period of use or in excess of the permitted quantities or metrics.

11.3 Early Access Services. You agree and acknowledge that Early Access Services are still under development, may be inoperable or incomplete, and You are using the Early Access Services at Your own risk. You may not rely, or base purchasing decisions, on Early Access Services becoming generally available. You agree to cooperate with Us in testing and providing feedback in relation to the Early Access Services. Any feedback provided shall be deemed proprietary and confidential to Us and may be used by Us without restriction.

11.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, EVALUATION SOFTWARE, HARDWARE, EARLY ACCESS SOFTWARE, AND NO-CHARGE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, AVAILABILITY, ACCEPTABLE QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE DISCLAIM ALL LIABILITIES TO THE MAXIMUM EXTENT PERMITTED BY LAW. Section 12.2 (Indemnification) and Section 9 (Warranties) of this Agreement do not apply to Your use of the Evaluation Software, Hardware, Early Access Software, or No-Charge Services.

## **12. INTELLECTUAL PROPERTY OWNERSHIP AND INDEMNIFICATION**

12.1 Proprietary Rights. We and Our licensors retain all worldwide intellectual property rights, including copyrights, trademarks, service marks, patents, trade secrets, know-how, moral rights and all other proprietary rights, including registrations, applications, renewals and extensions of such rights existing anywhere in the world, whether registered or unregistered ("Intellectual Property Rights") in the Software and all derivatives thereof and any Cloud Services We provide to You. Subject to any third-party claims or licenses, You retain ownership of all of Your pre-existing Intellectual Property Rights.

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12.2 Indemnification. If a third-party sues You claiming that the Software or Cloud Services infringes a valid third-party patent, copyright, trademark or trade secret, We shall indemnify and defend You from: (a) any fees, fines and costs actually incurred; and (b) damages and costs finally awarded by a court of competent jurisdiction in relation to that claim. Our obligation to indemnify is contingent on You giving Us (a) prompt written notice of and all available information about any such claim; (b) control and direction of the defence and any settlement of the claim, provided that such settlement does not require admission of wrongdoing or payment of damages by You; and (c) reasonable cooperation in such defence. We shall not indemnify You and shall have no responsibility for third-party claims arising out of: (a) any modification of the Software or Cloud Services; (b) any failure to implement Updates and Upgrades provided under Support Services; (c) or the combination, operation, or use of the Software or Cloud Services with or damages based on the value of third-party programs, data or documentation, to the extent that the claims would not have occurred but for such combination, operation or use; (d) any use of the Software or Cloud Services that is not expressly permitted under this Agreement; (e) continued use of infringing Software or Cloud Services after termination or after We give You modified or replacement non-infringing Software or Cloud Services, as specified below; or (f) if the infringement comes from materials developed by Us in accordance Your instructions. If the Software or Cloud Services become the subject of an third-party infringement claim, or if We think that this may happen in the future, We can at Our own expense and sole reasonable discretion: (a) modify the Software or Cloud Services to be non-infringing without a material diminution in functionality; (b) obtain for You a license to continue using the Software or Cloud Services; or (c) terminate this Agreement and refund a pro rata portion of the fee paid for the applicable portion of the Software or Cloud Services. For Software, the refund shall be based on a straight-line amortization over a five (5) year term beginning on the date of initial delivery of the Software. For Cloud Services, the refund shall be the prepaid fees related to unexpired periods. The remedies in this Section 12.2 represent Our entire liability and obligation and Your sole and exclusive remedy with respect to third-party Intellectual Property Rights infringement claims related to the Software or Cloud Services.

### 13. LIABILITY LIMITS

13.1 Limitations. Regardless of the basis of the claim (e.g. contract, tort or statute), the total liability of Us and Our licensors or You shall not exceed the amounts actually received by Us for the Software or Professional Services at issue or the pro-rata fees for the previous 12 months of Cloud Services or Support Services immediately preceding the event that gave rise to the liability, or the minimum amounts permitted by applicable laws, if greater.

13.2 Exclusions. We and Our licensors are not liable for any: (a) indirect, consequential, incidental, exemplary or special damages; (b) any loss or corruption of data; or (c) interruption to Your business.

13.3 Exceptions. The limitations and exclusions Sections 13.1 and 13.2 above shall not apply to a breach of: (a) Our intellectual property rights; (b) liability for an indemnified claim under Section 12.2; (c) death or bodily injury caused by negligence; or (d) any claim arising from wilful misconduct or fraud.

### 14. CONFIDENTIALITY

14.1 General. "Confidential Information" means any information disclosed by one party to the other party in connection with this Agreement that is marked "confidential" or "proprietary" at the time of disclosure; if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure; or (c) by its nature or the circumstances surrounding its disclosure or content should be considered confidential or proprietary to a reasonable recipient. "Confidential Information" includes copies of such information, but excludes information that: (a) is or becomes a part of the public domain through no action or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party from the disclosing party; (c) is lawfully disclosed to the receiving party by a third-party without restriction on the disclosure; or (d) is independently developed by the receiving party.

14.2 Treatment. Confidential Information shall remain the property of the disclosing party. Each Party shall have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement. Each party agrees: (a) to hold the other party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other party's Confidential Information only to those employees or agents on a need to know basis provided that they are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those specified herein. The receiving party shall protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own confidential or proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving party may disclose the other party's Confidential Information to the extent that such disclosure is required pursuant to a judicial or administrative proceeding, provided that, prior to such disclosure, the receiving party gives the disclosing party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

14.3 Return or Destruction. Upon termination of this Agreement or the disclosing party's written request, all Confidential Information (including all copies thereof) of the disclosing party shall be returned or destroyed, unless the receiving party is required to retain such information by law, and the receiving party shall certify its compliance with this Section 14.3.

### 15. DATA PROTECTION AND PRIVACY

15.1 We may collect and use data and other information pertaining to You and Your Users or related to You and Your Users' use of the Cloud Services for purposes of facilitating the Cloud Services, including securing, managing, measuring and improving the Cloud Services as well as to enable Us to develop and market additional products and services and for other purposes specified in Our Privacy Statement. We collect and use all such data and information in accordance with Our Privacy Statement, which You acknowledge.

15.2 To the extent that We process any personal data (as defined in the EU General Data Protection Regulation 2016/679 of the European Parliament and the Council ("GDPR") of Users (or any other individuals) on Your behalf and that personal data relates to Users or other individuals subject to the territorial scope of the GDPR or any successor legislation, We and You agree to be bound by the provisions of the Nutanix Data Processing Agreement, a copy of which is available upon request or may be found Our website.

15.3 You represent and warrant that: (a) You have obtained all necessary rights, consents, releases and permissions to submit all Your Content to the Cloud Services and to grant the rights granted to Us in these Terms; and (b) Your submission and use of Your Content as authorized in these Terms shall not violate any laws, any third-party intellectual property, privacy, publicity or other rights, or any of Your or third-party policies or terms governing Customer Content. If We are sued by a third party as a result of Your alleged violation of this provision, You agree to fully indemnify US (including our officers, directors, employees and agents) against any fees, fines, costs, liens, judgments and expenses that any of these persons may incur as a result of any such action.

### 16. COMPLIANCE WITH LAWS, EXPORT CONTROL AND U.S. GOVERNMENT

16.1 Compliance with Laws. We and You shall comply with all applicable laws and regulations anywhere in the world including but not limited to those relating to anti-corruption or anti-bribery e.g. the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or those pertaining to use of any Cloud Services provided via this Agreement.

16.2 Export Control. The Software, Cloud Services, Support Services and Professional Services supplied under this Agreement are subject to export controls under the laws and regulations of the United States and other countries as applicable. You agree to comply with such laws and regulations, and in particular, represent and warrant that You: (a) are not, and are not acting on behalf of (i) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions, or (ii) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Non-proliferation Sanctions, or Debarred List; and (b) shall not permit the Software, Cloud Services Support Services or Professional Services to be used, directly or indirectly, for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. You agree that the Software may not be exported or re-exported to Cuba, Iran, North Korea, Sudan, Syria, or the region of Crimea. You won't resell, transfer, or re-export



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products to any legally denied entity (including but not limited to Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine or Vietnam). You shall provide Us with end user information upon request. You shall obtain all required authorizations, permits, or licenses to export, re-export or import, as required pursuant to 18.3 U.S. Government. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

## 17. TERM AND TERMINATION

17.1 Term. This Agreement is effective until expiration or termination. The term of any Software license, Cloud Services, Support Services or Professional Services FlexCredits is as specified in the Entitlement.

17.2 Termination or Suspension for Cause. Either party has the right to suspend or terminate this Agreement upon written notice to the other party if the other party: (a) is in default of any material obligation and the default has not been cured within thirty (30) days of receipt of written notice specifying the default; or (b) becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law domestic or foreign, or has been liquidated. Use of the Software or Cloud Services outside the scope of this Agreement (including but not limited to the Entitlement) is unauthorized and is a material breach that shall void the warranty and/or support obligations.

17.3 Consequences of Termination. Upon termination, all outstanding amounts payable shall become immediately due and Your rights to use the Software, access the Cloud Services or receive the Support Services and Professional Services end immediately. You shall certify to Us in writing that You have stopped using the Software and/or accessing the Cloud Services within five (5) days of termination and that You have destroyed all copies of the Software.

17.4 Survival. Sections 4.3, 5.4, 10.3, 12, 13, 14, 16, 18.2, 18.4, and 18.6 shall survive the expiration or termination of this Agreement.

## 18. MISCELLANEOUS

18.1 Affiliates and Service Providers. The Software, Documentation, Cloud Services, Support Services and deliverables provided as part of the Professional Services may be used by Your Affiliates and service providers acting on Your behalf, provided that they comply with the terms of this Agreement. You remain liable for the any breach of this Agreement by any Affiliate or service provider.

18.2 Audit. Upon reasonable notice, We or Our independent accountants can examine Your Software usage once per year to verify compliance with this Agreement. If this audit discloses over-usage or any other material non-compliance, then You shall promptly pay to Us any additional fees owed and the reasonable costs of conducting the audit. You shall promptly provide all information reasonably requested in this process. We shall conduct the audit in a manner that is designed to minimize inconvenience and interruption to Your business.

18.3 Insurance. We shall maintain adequate insurance during the term of this Agreement. Upon request, We shall send You proof of coverage.

18.4 Notice. Our notice address is: Nutanix, Inc., 1740 Technology Drive, Suite 150, San Jose, CA 95110, Attn: Chief Legal Officer.

18.5 Assignment. You may not assign this Agreement or any rights that We have given You under it unless We provide consent, which We shall not unreasonably withhold. Either party can assign this Agreement to a successor in interest in the context of a change of control.

18.6 Severability. If any provision in this Agreement is found to be unenforceable by a judge, the remainder of this Agreement will remain in full force and effect.

18.7 Waiver. Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

18.8 Sub-Contractors. We may use subcontractors, but We shall remain liable to You for all Our obligations under this Agreement.

18.9 Amendments. Any amendment to this Agreement must be executed by both parties in writing.

18.10 Entire Agreement. Unless We and You have entered into a separate written agreement for the supply of Software, Cloud Services, Support Services and/or Professional Services (in which case that separate written agreement would take precedence over this Agreement), this Agreement represents the entire agreement between Us and You. Any other communication, either oral or in writing, shall not form a part of this Agreement. Any conflicting terms and conditions contained in Your purchase order shall not have any effect.

18.11 Governing Law and Enforcement Rights. If You are located in the Americas or in a country in which We have no local sales subsidiary, this Agreement shall be construed pursuant to the laws of the State of California, with venue in the Northern District of the State of California, United States, excluding conflicts of law provisions. If You are located in any other country in which We have a local sales subsidiary, then this Agreement shall be construed pursuant to the laws of England and Wales with the exclusive jurisdiction of English and Welsh courts for any disputes arising under or in connection with the Agreement. It is possible that a third-party licensor will be a direct and intended third-party beneficiary of this Agreement and may enforce it directly.